

**\*\* E-filed October 25, 2011 \*\***

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Attorneys for Defendant

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ANGELENE LOMAX,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
VETERANS AFFAIRS,

Defendant.

Docket No. C 10-4445 HRL

**STIPULATION AND AGREEMENT OF  
COMPROMISE AND SETTLEMENT  
AND ~~PROPOSED~~ ORDER**

IT IS HEREBY STIPULATED by and between the parties, after full and open discussion, that this action be settled and compromised on the following terms:

WHEREAS, Plaintiff filed the above-captioned action under the Age Discrimination in Employment Act; Title VII of the Civil Rights Act of 1964; the American with Disabilities Act; and the Fourteenth Amendment of the United States Constitution.

WHEREAS, the parties participated in a mediation before Linda McPharlin on September 14, 2011. This mediation was held after Defendant's motion for summary judgment was filed and fully briefed but before said motion was heard. Both parties were represented by counsel at the mediation. The mediation was successful and resulted in the settlement of this case in its entirety.

1 WHEREAS, Plaintiff and Defendant wish to avoid any further litigation and  
2 controversy and to settle and compromise fully any and all claims and issues that have been  
3 raised, or could have been raised, arising out of Plaintiff's employment with Defendant, which  
4 have transpired prior to the execution of this Agreement;

5 NOW, THEREFORE, in consideration of the mutual promises contained in this  
6 Agreement, and other good and valuable consideration, receipt of which is hereby  
7 acknowledged, the Parties agree as follows:

8 1. **Settlement Amount.** In full and final settlement of all claims in connection with the  
9 above-captioned action, Defendant shall pay Plaintiff a total sum of \$25,000.00. There shall be  
10 no withholding from this amount. Plaintiff understands that this payment will be reported to  
11 the Internal Revenue Service ("IRS"), and that any questions as to the tax liability, if any, as a  
12 result of this payment is a matter solely between Plaintiff and the IRS. The check will be made  
13 payable to Angelene Lomax, and will be mailed to Plaintiff at 29 Montsalas Drive, Monterey,  
14 CA 93940. Plaintiff and her attorney have been informed that payment of the Settlement  
15 Amount may take sixty (60) days or more to process.

16 2. **Release.** In consideration of the payment of the Settlement Amount and the other  
17 terms set forth in this Stipulation and Agreement, Plaintiff hereby releases and forever  
18 discharges Defendant, United States Department of Veterans Affairs and any and all of its past  
19 and present officials, agents, employees, attorneys, insurers, their successors and assigns, from  
20 any and all obligations, damages, liabilities, actions, causes of actions, claims and demands of  
21 any kind and nature whatsoever, including claims arising under the Age Discrimination in  
22 Employment Act; Title VII of the Civil Rights Act of 1964; the American with Disabilities  
23 Act; the Rehabilitation Act; and the Fifth and Fourteenth Amendments of the United States  
24 Constitution, whether suspected or unsuspected, at law or in equity, known or unknown, or  
25 omitted prior to the date she executes this Agreement, which arise from or relate to her  
26 employment with United States Department of Veterans Affairs.

27 3. **Attorneys' Fees.** The parties agree that the Settlement Amount is in full  
28 satisfaction of all claims for attorneys' fees and costs arising from work performed by Plaintiff's

1 counsel at all stages of litigation, including, but not limited to, the processing of Plaintiff's  
 2 administrative and district court complaints in connection with the above-captioned action, and  
 3 any other EEO administrative proceedings which are currently pending.

4       4. **Dismissal.** In consideration of the payment of the Settlement Amount and the other  
 5 terms of this Stipulation and Agreement, Plaintiff agrees that she will within seven days of this  
 6 agreement, execute a Stipulation of Dismissal, which stipulation shall dismiss, with prejudice,  
 7 all claims asserted in this Action or any claims that could have been asserted in this Action.  
 8 The fully executed Stipulation of Dismissal will be held by counsel for Defendant and will be  
 9 filed with the Court upon receipt by Plaintiff's counsel of the Settlement Amount and the  
 10 revised Standard Form 50 and neutral letter of reference described in paragraph 14 below.

11       5. **Waiver of California Civil Code § 1542.** The provisions of California Civil Code  
 12 Section 1542 are set forth below:

13               "A general release does not extend to claims which the creditor  
 14               does not know or suspect to exist in his or her favor at the time  
 15               of executing the release, which if known by him or her must have  
                  materially affected his or her settlement with the debtor."

16 Plaintiff has been apprised of the statutory language of Civil Code Section 1542 by her  
 17 attorneys, and fully understanding the same, nevertheless elects to waive the benefits of any  
 18 and all rights he may have pursuant to the provision of that statute and any similar provision of  
 19 federal law. Plaintiff understands that, if the facts concerning Plaintiff's claims and the liability  
 20 of the government for damages pertaining thereto are found hereinafter to be other than or  
 21 different from the facts now believed by them to be true, this Agreement shall be and remain  
 22 effective notwithstanding such material difference.

23       6. **Agreement as a Complete Defense.** This Agreement may be pleaded as a full and  
 24 complete defense to any subsequent action or other proceeding involving any person or party  
 25 which arises out of the claims released and discharged by the Agreement.

26       7. **No Admission of Liability.** This is a compromise settlement of a disputed claim  
 27 and demand, which settlement does not constitute an admission of liability or fault on the part  
 28 of the Defendant or any of its past and present officials, agents, employees, attorneys, or

1 insurers on account of the events described in Plaintiff's complaints in these actions.

2 8. **Tax Liability.** If any withholding or income tax liability is imposed upon Plaintiff  
3 or Plaintiff's counsel based on payment of the settlement sum received herein, Plaintiff or  
4 Plaintiff's counsel shall be solely responsible for paying any such determined liability from any  
5 government agency thereof.

6 9. **Enforcement Sole Remedy.** The parties agree that should any dispute arise with  
7 respect to the implementation of the terms of this Agreement, Plaintiff shall not seek to rescind  
8 the Agreement and pursue her original causes of action. Plaintiff's sole remedy in such a  
9 dispute is an action to enforce the Agreement in the United States District Court for the  
10 Northern District of California.

11 10. **Construction.** Each party hereby stipulates that it has been represented by and has  
12 relied upon independent counsel in the negotiations for the preparation of this Agreement, that  
13 it has had the contents of the Agreement fully explained to it by such counsel, and is fully  
14 aware of and understands all of the terms of the Agreement and the legal consequences thereof.  
15 For purposes of construction, this Agreement shall be deemed to have been drafted by all  
16 Parties to this Agreement and shall not, therefore, be construed against any Party for that reason  
17 in any subsequent dispute.

18 11. **Severability.** If any provision of this Agreement shall be invalid, illegal, or  
19 unenforceable, the validity, legality, and enforceability of the remaining provision shall not in  
20 any way be affected or impaired thereby.

21 12. **Integration.** This instrument shall constitute the entire Agreement between the  
22 parties, and it is expressly understood and agreed that the Agreement has been freely and  
23 voluntarily entered into by the parties hereto with the advice of counsel, who have explained  
24 the legal effect of this Agreement. The parties further acknowledge that no warranties or  
25 representations have been made on any subject other than as set forth in this Agreement. This  
26 Agreement may not be altered, modified or otherwise changed in any respect except by writing,  
27 duly executed by all of the parties or their authorized representatives.

28 13. **Authority.** The signatories to this Agreement have actual authority to bind the

1 parties.

2 14. **Expungement of Personnel Records.** In addition to the terms described in  
3 paragraph 1 above, Defendant agrees to the following:

4 (A) Defendant shall expunge from the plaintiff's Official Personnel Folder ("OPF") all  
5 records of her termination, and replace such records with a Standard Form 50 reflecting that  
6 plaintiff voluntarily resigned on June 30, 2009. Plaintiff will be deemed to have been on Leave  
7 Without Pay between June 6, 2009, and June 30, 2009. Defendant shall provide Plaintiff with  
8 a copy of the revised Standard Form 50.

9 (B) Defendant shall provide Plaintiff with a neutral letter of reference, which contains  
10 only the following information: Plaintiff's name, salary, dates of service with the agency,  
11 position, grade (GS-11-Step-10), job duties, and that she voluntarily resigned for personal  
12 reasons.

13 (C) Plaintiff also agrees that in making future applications for employment with any  
14 prospective employer, she will direct all inquiries about her employment status and history with  
15 VAPAHCS only to the Chief, Human Resources Management Service, VAPAHCS, at the VA  
16 Palo Alto Medical Center. Defendant shall provide Plaintiff with the phone number of the  
17 Chief, Human Resources Management Service, VAPAHCS, so she can list it on employment  
18 applications. In response to such inquiries made to the Chief of Human Resources  
19 Management Service for VAPAHCS regarding Plaintiff, the Chief of Human Resources  
20 Management Service, on behalf of VAPAHCS, agrees to provide an employment reference  
21 regarding Plaintiff that is limited to Plaintiff's name, salary, dates of service with the agency,  
22 position, grade (GS-11-Step-10), job duties, and that she voluntarily resigned for personal  
23 reasons. The parties specifically acknowledge and agree that the VAPAHCS is unable to  
24 control communications from prospective employers to the agency, other than communications  
25 with the Chief of Human Resources; that Plaintiff bears the risk of communications with  
26 prospective employers; and, that Plaintiff will not attempt to hold the VAPAHCS liable or in  
27 breach of this Settlement Agreement for responses to communications except for prospective  
28 employer communications with the Chief of Human Resources.

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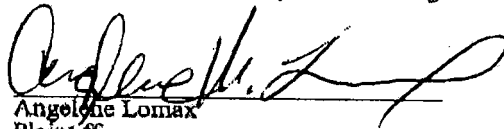
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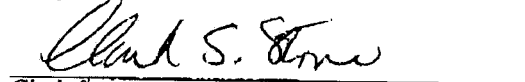
1        15. Application for Future Employment. Plaintiff agrees that she will not apply for  
2 employment at the VAPAHCS for a period of five years following the date she signs this  
3 Agreement. However, nothing in this Agreement shall preclude plaintiff from applying to any  
4 other federal agencies, or from applying to the VAPAHCS after five years following the date  
5 she signs this Agreement.

6        16. Knowing and Voluntary Waiver of Remedies Under Age Discrimination in  
7 Employment Act. Plaintiff acknowledges that she has been given a reasonable period of time  
8 to consider this Agreement. Plaintiff is advised to consult her attorney about this Agreement.

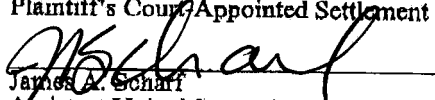
9  
10 DATED: October 7, 2011

  
Angelique Lomax  
Plaintiff

11  
12 DATED: October 7, 2011

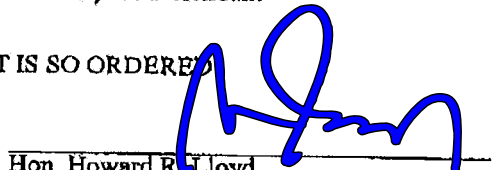
  
Clark Stone  
Plaintiff's Court Appointed Settlement Counsel

13  
14 DATED: October 1, 2011

  
James A. Scharf  
Assistant United States Attorney  
Attorney for Defendant

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16  
17 PURSUANT TO STIPULATION, IT IS SO ORDERED

18  
19 Dated: October 25, 2011

  
Hon. Howard R. Lloyd  
United States District Court Magistrate Judge

1 **C10-04445 Notice will be electronically mailed to:**

2 James Scharf james.scharf@usdoj.gov

3 **Notice will be provided by mail to:**

4 Angelene Lomax  
29 Montsalas Drive  
5 Monterey, CA 93940

6 **Counsel are responsible for distributing copies of this document to co-counsel who have not**  
7 **registered for e-filing under the court's CM/ECF program.**

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